

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

NIGHT BOX  
FILED

MAR 08 2002

CLARENCE MAUDCA  
CLERK, USDC / SDFL / MIA

\_\_\_\_\_  
WILLIAM M. KLEIN BY STEPHEN S. KLEIN  
under power of attorney, on behalf of himself  
and all others similarly situated,

Plaintiff,

v.

\_\_\_\_\_  
JAMES L. BROADHEAD, PAUL J. EVANSON,  
LEWIS HAY, III, DENNIS P. COYLE,  
THOMAS F. PLUNKETT, B.F. DOLAN,  
H. JESSE ARNELLE, SHERRY S. BARRAT,  
ROBERT M. BEALL, II, J. HYATT BROWN,  
MARSHALL M. CRISER, ARMANDO M.  
CORDINO, WILLARD D. DOVER,  
ALEXANDER W. DREYFOOS, JR.,  
DREW LEWIS, FREDERIC V. MALEK and  
PAUL R. TREGURTHA,

Defendants,

and

FPL GROUP, INC.,

Nominal Defendant.

02-20758

CIV-MORENO

MAGISTRATE JUDGE  
DUBÉ

**PLAINTIFF'S VERIFIED DERIVATIVE COMPLAINT**

Plaintiff alleges the following upon information and belief, except as to matters concerning himself, which are alleged upon personal knowledge. Plaintiff's information and belief is based upon, *inter alia*, the investigation conducted by plaintiff's counsel.



### **NATURE OF THE ACTION**

1. Plaintiff brings this shareholder derivative action in the name and for the benefit of FPL Group, Inc. ("FPL Group") and under Rule 23.1, Fed. R. Civ. P. As described below, defendants include FPL Group's Board of Directors (the "Board"). FPL Group is a nominal defendant.

2. In July of 2000, FPL Group and Entergy Corporation ("Entergy") announced a proposed merger. The merger was approved by the shareholders of the respective companies in December 2000.

3. The FPL Group and Entergy merger, however, was abandoned and the parties terminated the merger agreement on April 1, 2001.

4. Despite the failed merger, certain executives of FPL Group, Florida Power & Light Company ("FPL"), and FPL Energy, L.L.C. ("FPL Energy") received millions of dollars in compensation tied to the failed merger. James Broadhead, Chairman and CEO of both FPL Group and FPL, received \$22,686,674, and four other FPL Group and subsidiary executives received payments totaling \$29,344,498 among themselves.

5. Two of the five defendants (Broadhead and Plunkett) who received these payments rapidly left the company and are no longer affiliated with FPL Group or its subsidiaries.

6. FPL Group, with the Board's knowledge and approval, recklessly released million of dollars in "compensation" to these executives of FPL Group, FPL, and FPL Energy under a "change in control" provision set forth in two long-term incentive plans described in further detail below. Although FPL Group shareholders voted in favor of the merger with Entergy, the merger was called off; no transaction was ever consummated and no new company resulted from the proposed merger. Nevertheless, the Board approved approximately \$52 million in payments and accelerated benefits

to defendants Broadhead, Evanson, Hay, Coyle and Plunkett on the theory that the abandoned Entergy merger constituted a "change in control" under certain long-term incentive plans that triggered these exorbitant and wasteful payments. The plain language of these incentive plans, however, dictated that because no new corporation resulted from the proposed (but abandoned) merger, no "change of control" ever occurred that would trigger FPL Group's obligation to pay or accelerate the payment of such lavish sums. Indeed, the change of control provision states that the payments are triggered only if: "the Corporation's shareholders approve a merger, sale of assets or other similar transaction with respect to which the Corporation's shareholders immediately before the transaction do not own at least 75% of the voting securities of the corporation resulting from the transaction."

7. Although the Board knew or had reason to know that such wrongdoing had occurred, it failed to correct it or prevent its continuation. Given the language of the change of control provision, no payments should have been made to the corporate executives because no corporation resulted from the transaction.

8. As a result of defendants' conduct, the business community's perception of FPL Group has been, and will continue to be, substantially impaired. Further, the Company will suffer from "liar's discount" because of its tainted image.<sup>1</sup>

9. Plaintiff made a written demand upon the Board of Directors on January 17, 2002 to bring this action. (See Demand Letter, annexed hereto as Exhibit "A"). The Demand Letter urged

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<sup>1/</sup> The term "liar's discount" is commonly applied to stocks of companies that have been implicated in illegal behavior and that have misled securities analysts and the investing public.

FPL Group's Board to take the "appropriate steps to provide for equitable and therapeutic relief, as well as retroactive damages, in connection with the actions described" in the letter.

10. On February 5, 2002, the Board acknowledged receipt of the Demand Letter. (A copy of the Board's letter is annexed hereto as Exhibit B). The letter stated that the Board has "created a Demand Evaluation Committee" which will conduct an "analysis and recommendation" of the claims in the Demand Letter. The letter also stated that "[t]he Board will respond substantively to your demand once it has received and considered the Report of the Committee." To date, the Board has not provided any other response to plaintiff's Demand Letter and has not informed plaintiff of any other activities it has undertaken with respect to the Demand letter.

11. The FPL Group Board, however, has publicly stated that it has no intention of seeking the return of these executive payments. On January 17, 2002, FPL spokeswoman Mary Lou Kromer was quoted in the *Miami Herald*, saying: "The document shareholders received [a Proxy Statement] related to the details of the proposed merger clearly stated that if the deal was approved, certain awards under the incentive plan would be deemed fully earned and vested and would be paid out. There were no further conditions to the payments."

#### **THE PARTIES**

12. Plaintiff was a shareholder of FPL Group at the time the misconduct alleged herein occurred and continues to hold his FPL Group stock. Plaintiff is a citizen of New Jersey.

13. Defendant FPL Group is incorporated under the laws of Florida and maintains its executive offices in Juno Beach, Florida. As of October 31, 2001, FPL Group had approximately 175,868,896 shares of commons stock outstanding. FPL Group is publicly traded on the New York Stock Exchange.

14. The following defendants served as directors and/or senior executive officers of FPL Group or its subsidiaries ("Individual Defendants") as of the commencement of this action and during all times material hereto.

15. Defendant James L. Broadhead was a Director of FPL Group since 1990 until December 31, 2001, and also served as Chairman of the Board and Chief Executive Officer of FPL Group until December 31, 2001, and is a citizen of the State of Florida.

16. Defendant Paul J. Evanson has been a Director of FPL Group since 1995, and is a citizen of the State of Florida.

17. Defendant Lewis Hay, III has been a Director of FPL Group since 2001, and is currently serving as Chairman, President and Chief Executive Officer of FPL Group, and is a citizen of the State of Florida.

18. Defendant Dennis P. Coyle has been General Counsel and Secretary of FPL Group since 1991, and is a citizen of the State of Florida.

19. Defendant Thomas F. Plunkett was President of the Nuclear Division of FPL at all relevant times, and is a citizen of the State of Florida.

20. Defendant B.F. Dolan was a Director of FPL Group since 1992, and is a citizen of the State of North Carolina.

21. Defendant H. Jesse Arnelle has been a Director of FPL Group since 1990, and is a citizen of the State of California.

22. Defendant Sherry S. Barrat has been a Director of FPL Group since 1998, and is a citizen of the State of California.

23. Defendant Robert M. Beall, II has been a Director of FPL Group since 1989, and is a citizen of the State of Florida.

24. Defendant J. Hyatt Brown has been a Director of FPL Group since 1989, and is a citizen of the State of Florida.

25. Defendant Marshall M. Criser has been a Director of FPL Group since 1989, and is a citizen of the State of Florida.

26. Defendant Armando M. Cordino has been a Director of FPL Group since 1994, and is a citizen of the State of Florida.

27. Defendant Willard D. Dover has been a Director of FPL Group since 1989, and is a citizen of the State of Florida.

28. Defendant Alexander W. Dreyfoos, Jr. has been a Director of FPL Group since 1997, and is a citizen of the State of Florida.

29. Defendant Drew Lewis has been a Director of FPL Group since 1992, and is a citizen of the State of Pennsylvania.

30. Defendant Frederic V. Malek has been a Director of FPL Group since 1987, and is a citizen of the State of Virginia.

31. Defendant Paul R. Tregurtha has been a Director of FPL Group since 1989, and is a citizen of the State of Connecticut.

32. Each of the Individual Defendants, because of his or her position as a director and/or senior officer of FPL Group, owed and continues to owe fiduciary duties to the nominal corporate defendant and its present and former shareholders in connection with the operations, management and

direction of FPL Group. Unless otherwise specifically indicated herein, the phrase "defendants" does not include FPL Group.

33. To discharge these duties, defendants were required, among other things:

- a. to ensure that the business and affairs of FPL Group were conducted in accordance with state and federal laws, rules and regulations and the charters and by-laws of the companies;
- b. to ensure the prudence and soundness of FPL Group management's policies and practices; and
- c. to remain informed as to how FPL Group was in fact operating and, upon receiving notice or information of imprudent or unsound practices, to make an appropriate, thorough investigation in connection therewith and to take steps to correct the condition or practice. The defendants failed to discharge these duties at all relevant times hereto.

34. Each defendant herein is sued individually as a conspirator or aider and abettor as well as, in their individual capacity as directors and/or officers of FPL Group. The liability of each arises from the fact that they have caused or engaged in all or part of the unlawful acts, plans, schemes, or transactions complained of herein and were necessary and indispensable to the consummation of the wrongs complained of herein.

#### **JURISDICTION AND VENUE**

35. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1). Plaintiff, on the one hand, and defendants, on the other, are citizens of different states. The amount in controversy exceeds \$75,000 exclusive of interests and costs. This action is not a collusive one to confer jurisdiction on a court of the United States that it would not otherwise have.

36. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b). Many of the acts, transactions, and occurrences constituting violations of law complained of herein occurred in this District and FPL Group's principal place of business is located in this District.

### **SUBSTANTIVE ALLEGATIONS**

37. FPL Group is a public utility holding company. FPL Group's principal subsidiary, Florida Power & Light Company, is engaged in the generation, transmission, distribution and sale of electric energy.

38. FPL Group Capital, Inc., a wholly owned subsidiary of FPL Group, holds the capital stock and provides funding for the operating subsidiaries other than FPL. The business activities of these operating subsidiaries primarily consist of FPL Energy's independent power projects. FPL Energy, LLC, FPL Group's energy generating subsidiary, produces electricity from various fuels. FPL Energy has power plants in operation in 12 states.

39. In 1994, FPL Group asked the shareholders to approve what was termed the Long Term Incentive Plan 1994 ("1994 Plan"). The proposed 1994 Plan was to replace FPL Group's Long Term Incentive Plan originally adopted in 1985.

40. A copy of the 1994 Plan was included as Exhibit A to FPL Group's March 22, 1994 DEF 14A Proxy, filed with the Securities and Exchange Commission.

41. Section 9.01 of the 1994 Plan, entitled "Acceleration and Cash-Out Rights" provides:

In the event of a "Change of Control," as defined in Section 9.02, automatically in the case of Participants subject to Section 16 of the Exchange Act, and unless otherwise determined by the Board in writing at or after grant but prior to the occurrence of the Change of Control in the case of Participants not subject to Section 16 of the Exchange Act: (i) The performance criteria of all Performance Awards, Performance-Based Restricted Stock, and Other Stock-Based Awards shall be deemed fully achieved and all such Awards shall be fully earned and vested, subject only to the



restrictions on dispositions of equity securities set forth in Section 8.01.1 and legal restrictions on the issuance of Shares set forth in Section 8.04; (ii) Any Option, Stock Appreciation Right, and other Award in the nature of a right that may be exercised which was not previously exercisable and vested shall become fully exercisable and vested, subject only to the restrictions on dispositions of equity securities set forth in Section 8.01.1 and legal restrictions on the issuance of Shares set forth in Section 8.04; (iii) The restrictions, deferral limitations, and forfeiture conditions applicable to any other Award granted under the Plan shall lapse and such Awards shall be deemed fully vested, subject only to the restrictions on dispositions of equity securities set forth in Section 8.01.1 and legal restrictions on the issuance of Shares set forth in Section 8.04; and (iv) All outstanding Awards shall be cancelled and a Participant holding any such Award shall be paid in cash therefor on the basis of the "Change of Control Price" (as defined in Section 9.03) as of the date that the Change of Control occurs, or such other date as the Committee may determine prior to the Change of Control; provided, however, that this Section 9.01 (iv) shall not apply in the case of any Award if the cancellation of and payment for such Award would cause the Participant to incur actual short-swing profits liability under Section 16(b) of the Exchange Act.

42. Section 9.03 of the 1994 Plan defines "Change of Control Price" as the highest price per share paid in any transaction reported on the securities exchange or trading system on which the Shares are then primarily listed or traded, or paid or offered in any transaction related to a Change of Control of the Corporation at any time during the preceding 60-day period as determined by the Committee, except that in the case of Incentive Stock Options and Stock Appreciation Rights relating thereto, such price shall be based only on transactions reported for the date on which the Committee decides to cash out such Awards.

43. The 1994 Plan defined Change of Control in Section 9.02:

For purposes of Section 9.01, a "Change of Control" shall mean: \*\*\* (c) Approval by the shareholders of the Corporation of a reorganization, merger or consolidation, in each case, with respect to which all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Corporation Common Stock and Outstanding Corporation Voting Securities immediately prior to such reorganization, merger or consolidation do not, following such reorganization, merger or consolidation, beneficially own, directly or indirectly, more than 75% of, respectively, the then outstanding shares of common stock and the combined voting

power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such reorganization, merger or consolidation in substantially the same proportions as their ownership, immediately prior to such reorganization, merger or consolidation of the Outstanding Corporation Common Stock and Outstanding Corporation Voting Corporation Securities, as the case may be.\*\*\*

44. The Annual Meeting of FPL Group's shareholders was held on May 9, 1994. The 1994 Long Term Incentive Plan was approved by the shareholders.

45. In 1996, shareholders Roger C. and Virginia L. Zwieg introduced a shareholder's proposal to amend the 1994 Plan. *See* 03/25/96 DEF 14A Proxy. The proposal asked the shareholders to modify the 1994 Plan "so that under future executive compensation arrangements the value of stock and or cash paid under this plan shall not exceed \$200,000 to any one executive in any calendar or fiscal year." The Board unanimously opposed this proposal, and told the shareholders that "a generally accepted principle of contemporary executive compensation practice is that a substantial portion of an executive officer's compensation should be dependent upon performance." In support of its formal position recommending that the shareholders vote against this proposal, the Board also stated that:

One of the objectives of the Long Term Incentive Plan is to align the interests of executive officers with the interests of shareholders. This is accomplished not only by making payouts under the plan dependent upon long-term performance, but by making payouts (other than cash payments for income taxes) in the form of shares of FPL Group Common Stock which the officer is expected to retain throughout his or her employment by the Corporation. The Zwiegs' proposal would frustrate this objective by decreasing the amount of an officer's compensation and net worth that is dependent upon the long-term performance of the Corporation and the value of its Common Stock. Again, it is difficult to see how this would be advantageous to the Corporation's shareholders. To summarize, the Zwiegs' proposal is contrary to sound executive compensation principles and practices and opposed to the best interests of shareholders.

46. The Annual Meeting of FPL Group's shareholders was held on May 13, 1996. The Zweig's shareholder proposal failed.

47. The FPL Group represented to shareholders that the Internal Revenue Code required re-approval of these types of plans every five years, the shareholders were asked to re-approve the 1994 Plan in 1999. See 3/29/99 DEF 14A Proxy. The FPL Group Board stated in relevant part:

In the event of a "change of control" of the Corporation, automatically in the case of the Covered Officers, (i) all performance criteria of performance-based awards will be deemed fully achieved and all such awards shall be fully earned and vested and (ii) all outstanding awards will be cancelled and the holder will be paid in cash therefor on the basis of the "change of control price" as of the date that the change of control occurs or such other date as the Compensation Committee may determine prior to the change of control.

A "change of control" is deemed to have occurred if: (i) any person, other than the Corporation, a subsidiary or employee benefit plan of the Corporation, or a corporation in a transaction resulting in more than 75% of its voting securities being owned by the Corporation's shareholders, is or becomes the beneficial owner of 20% or more of the voting power of the Corporation's outstanding voting securities; (ii) individuals who were members of the Board at the effective date of the Long Term Plan cease, for any reason to constitute at least a majority thereof, unless each director who was not a director at such date was elected by, or on the recommendation of, at least a majority of the directors who were serving at such date or who were subsequently so elected or appointed; (iii) the Corporation's shareholders approve a merger, sale of assets or other similar transaction with respect to which the Corporation's shareholders immediately before the transaction do not own at least 75% of the voting securities of the corporation resulting from the transaction; or (iv) the shareholders approve the liquidation or dissolution of the Corporation. "Change of control price" means the highest price per share paid in the open market, or offered to be paid in a transaction related to the change of control, during the preceding 60-day period.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE "FOR" REAPPROVAL.  
[3/29/99 DEF 14A] (emphasis added)

48. The Annual Meeting of FPL Group's shareholders was held on May 10, 1999, at which the shareholders re-approved portions of the 1994 Plan based on the Board's representations.

49. On July 30, 2000, FPL Group, Entergy, WCB Holding Corp. ("WCB"), Ranger Acquisition Corp. ("Merger Sub A") and Ring Acquisition Corp. ("Merger Sub B") entered into an Agreement and Plan of Merger (the "Merger Agreement").

50. A Special Meeting of FPL Group's shareholders was held on December 15, 2000 to approve the proposed merger between FPL Group and Entergy, which was approved by the shareholders of the respective corporations in December 2000.

51. On April 1, 2001, however, the companies terminated the Merger Agreement between FPL Group and Entergy. FPL Group stated in its amended Form 10-K, dated April 9, 2001, that "a number of factors led FPL Group to conclude the merger would not achieve the synergies or create the shareholder value originally contemplated when the merger was announced."

52. Despite the failure of the merger, the following executives of FPL Group and FPL Energy received millions of dollars of compensation which was tied to the merger and the "change in control," which was completely out of line with their prior compensation for 1999 and 1998:

Name	Position	2000	1999	1998
James L. Broadhead	Chairman and CEO of FPL Group and FPL	<b>\$22,686,674</b>	\$1,148,751	\$2,004,180
Paul J. Evanson	President of FPL	<b>\$10,395,654</b>	\$458,985	\$704,304
Lewis Hay, III	President of FPL Energy, LLC -	<b>\$6,696,320</b>	\$65,400	n/a (joined July 1999)
Dennis P. Coyle	General Counsel and Secretary of FPL Group and FPL	<b>\$6,349,587,</b>	\$251,095	\$412,413

Thomas F. Plunkett	President, Nuclear Division of FPL	<b>\$5,902,937</b>	\$179,564	\$103,481
<b>GRAND TOTALS</b>		<b>\$52,031,172</b>	\$2,103,795	\$3,224,378

53. These payments were improper and were not authorized by the 1994 Plan or by the shareholders of FPL Group. FPL Group explained these payments as follows: “FPL Group Shareholders’ December 15, 2000 approval of a proposed merger with Entergy Corporation resulted in a change of control under the definition in FPL Group’s 1994 Long Term Incentive Plan.” (See 4/11/01 14A Proxy.)

54. The payments referred to above were made by the FPL Group improperly and in breach of the Board’s fiduciary duty because a “change in control” never occurred. The 1994 and 1999 Plans require that a corporation result from the merger. See ¶¶ 43, 47 above. Because no such corporation resulted from the proposed merger between FPL and Entergy, the payments to these executives was improper, a corporate waste, and a breach of the Board’s fiduciary duties to the Company and its shareholders.

55. In April 2001, The FPL Group Compensation Committee, comprised of disinterested directors responsible for determining the payments to be made under the 1994 Plan, noted in FPL Group’s April 11, 2001 DEF 14A that: “[t]he Board of Directors adopted, and in 1994 and 1999 shareholders approved, an Annual Incentive Plan and a Long Term Incentive Plan that are intended to prevent the loss of the federal income tax deductions available to the Corporation for the amount of any compensation paid thereunder to the chief executive officer and the four other most

highly-compensated officers.” The Committee went on to note that despite this fundamental purpose, the payments made to the five FPL executives named herein may not actually be deductible:

In accordance with these plans, the Committee structured the 2000 executive compensation program to qualify for deduction all compensation paid thereunder to these officers, and it intends to do likewise with the executive compensation programs for 2001 and future years as long as doing so is compatible with what the Committee considers to be a sound compensation program. However, some of the payments to these officers under the Long Term Incentive Plan that resulted from the change of control of the Corporation that occurred as a result of the approval by the Corporation's shareholders of a proposed merger with Entergy Corporation may not be deductible by the Corporation for federal income tax purposes. The actual amount that may not be deductible is not determinable at this time.

56. The non-deductibility of the improper payments to the FPL executives named herein will further increase the cost of the payments.

#### **DERIVATIVE ALLEGATIONS**

57. Plaintiff brings this action derivatively in the right of and for the benefit of FPL Group to redress injuries suffered and to be suffered by the nominal corporate defendant, as a direct result of defendants' wrongdoing.

58. Plaintiff will adequately and fairly represent the interests of the nominal corporate defendant and its stockholders in enforcing and prosecuting their rights.

59. Plaintiff caused a demand to be made to the current board of directors of FPL Group on January 17, 2002 to redress injuries resulting from the misconduct alleged above. *See* Exhibit A.

60. As of the date of the filing of this Complaint, FPL Group has issued no further response other than to send plaintiffs a letter which is described in ¶10 above and annexed hereto as Exhibit B. Plaintiff and other FPL Group shareholders are entitled to relief.

**FIRST CLAIM**  
**(Against The Individual Defendants**  
**For Breaches of Fiduciary Duty)**

61. Plaintiff repeats and realleges each and every paragraph above as though fully set forth below.

62. This claim is brought derivatively by plaintiff on behalf of FPL Group against the Individual Defendants.

63. The Individual Defendants were and/or are fiduciaries of FPL Group and owed the Company a duty to conduct its business loyally, faithfully, carefully, diligently and prudently. These claims are asserted based on the Individual Defendants' acts in violation of state law and common law, which acts constitute gross and reckless breaches of fiduciary duties.

64. The Individual Defendants, in their roles as executives and/or directors of FPL Group or its subsidiaries, participated in the acts of mismanagement and misrepresentation alleged herein, or acted in reckless disregard of the facts known to them, and failed to exercise due care. The defendants became aware, or should have become aware through reasonable inquiry, of the facts alleged herein, but did nothing to correct them and thereby breached their fiduciary duties of care, loyalty, accountability and disclosure to the stockholders of FPL Group by failing to act as an ordinary prudent person would have acted in a like position.

65. The Individual Defendants have been responsible for the gross mismanagement of FPL Group. These defendants abdicated their corporate responsibilities, obligations and fiduciary duties by mismanaging FPL Group as alleged above.

66. As a result of the Individual Defendants' wrongful conduct and actions, FPL Group has suffered considerable damage and drastic diminution in the value of its assets and stock.

67. All the Individual Defendants, singly or in concert, engaged in the aforesaid conduct in grossly negligent and/or reckless disregard of their fiduciary duties to FPL Group.

68. At all times relevant herein, the Individual Defendants occupied fiduciary positions with FPL Group that made them privy to confidential material inside information concerning FPL Group and its operations.

69. By reason of the foregoing, the Individual Defendants have breached their fiduciary obligations to FPL Group and its stockholders.

70. FPL Group and its stockholders have been injured by reason of the Individual Defendants' grossly negligent breach and/or reckless disregard of their fiduciary duties to the Company. The Individual Defendants engaged in the aforesaid conduct without exercising reasonable and ordinary care which they as directors and senior executive officers owed to FPL Group and, in bad faith, have wrongfully breached and/or aided and abetted breaches of fiduciary duties to FPL Group. Plaintiff, as a stockholder and derivative representative of FPL Group, seeks damages and other relief for the nominal corporate defendant.

**JURY DEMAND**

71. Plaintiff hereby demands a trial by jury.

**WHEREFORE**, plaintiff demands judgment and preliminary and permanent relief in plaintiff's favor and in favor of FPL Group, as appropriate, against all defendants as follows:

- a. Authorizing the maintenance of this action as a derivative action, with plaintiff as derivative plaintiff;
- b. Declaring that the Individual Defendants have violated their fiduciary duties to FPL Group;



- c. Declaring that FPL Group is not required to pay any Individual Defendant any benefits pursuant to the terms of any employment, separation or consulting agreements;
- d. Directing that FPL Group is entitled to contribution from the Individual Defendants;
- e. Against each Individual Defendant for restitution and/or damages, including pre-judgment interest;
- f. Against defendants Broadhead, Evanson, Hay, Coyle and Plunkett for recovery of all sums wrongfully paid to them under the 1994 and 1999 Long-Term Incentive Plan.
- g. Requiring that FPL Group implement effective internal control mechanisms and corporate governance policies and procedures designed to adequately monitor FPL Group's compliance with federal and state laws;
- h. Awarding plaintiff the costs and disbursements of this litigation, including reasonable allowances for plaintiff's attorney's fees and experts' fees and expenses; and
- i. Granting such other further relief as may be just and proper under the circumstances.

Dated: March 7, 2002

**MILBERG WEISS BERSHAD  
HYNES & LERACH LLP**

By: 

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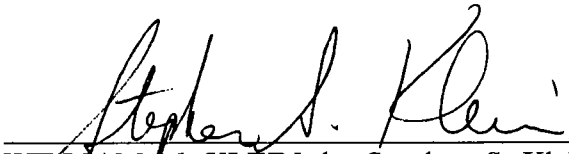
Fax: (212) 986-0158

**Attorneys for Plaintiff**

### VERIFICATION

I, William M. Klein, by Stephen S. Klein under power of attorney, declare that I have read the foregoing complaint and know the contents thereof, and that the same is true to my own knowledge, except as to matters herein stated to be alleged on information and belief and as to those matters I believe it to be true.

Dated: 3/4/02

  
\_\_\_\_\_  
WILLIAM M. KLEIN, by Stephen S. Klein under  
power of attorney

# **EXHIBIT A**

## Milberg Weiss Bershad Hynes & Lerach LLP

The Plaza, 5355 Town Center Road, Suite 900, Boca Raton, FL 33486  
(561) 361-5000 Fax: (561) 367-8400

www.milberg.com

New York  
San Diego  
San Francisco  
Los Angeles  
Seattle

January 17, 2002

### VIA HAND DELIVERY

Board of Directors  
c/o Lewis Hay, III Chariman of the Board  
FPL Group, Inc.  
700 Universe Blvd.  
Juno Beach, FL 33408

Dear Members of the Board:

We have been retained as counsel by William M. Klein (by Stephen S. Klein under Power of Attorney), a shareholder of FPL Group, Inc. ("FPL Group" or the "Company"). Mr. Klein was a shareholder at the time the actions contained herein occurred and continues to hold his shares. Pursuant to Fla. Stat. §607.07401, this letter represents a demand that FPL Group's Board of Directors take the appropriate steps to provide for equitable and therapeutic relief, as well as retroactive damages, in connection with the actions described below.

Our investigation has revealed that an act of gross mismanagement has been committed by certain of FPL Group's officers and directors which has injured FPL Group's shareholders. Specifically, FPL Group has improperly paid certain officers of FPL Group and its subsidiaries at least \$52,031,172 as explained below.

### The FPL Group 1994 Long Term Incentive Plan

In 1994, FPL Group shareholders approved what was termed the 1994 Long Term Incentive Plan ("1994 Plan"). A copy of the 1994 Plan was included as Exhibit A to FPL Group's March 22, 1994 DEF 14A Proxy. Section 9.01 of the 1994 Plan, entitled "Acceleration and Cash-Out Rights" provides that "[i]n the event of a "Change of Control," as defined in Section 9.02..., (i) the performance criteria of all Performance Awards, Performance-Based Restricted Stock, and Other Stock-Based Awards shall be deemed fully achieved and all such Awards shall be fully earned and vested...."

MILBERG WEISS BERSHAD HYNES & LERACH LLP

Board of Directors

January 17, 2002

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The Plan defined Change of Control in Section 9.02:

For purposes of Section 9.01, a "Change of Control" shall mean: \*\*\*  
(c) Approval by the shareholders of the Corporation of a reorganization, merger or consolidation, in each case, with respect to which all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Corporation Common Stock and Outstanding Corporation Voting Securities immediately prior to such reorganization, merger or consolidation do not, following such reorganization, merger or consolidation, beneficially own, directly or indirectly, more than 75% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such reorganization, merger or consolidation in substantially the same proportions as their ownership, immediately prior to such reorganization, merger or consolidation of the Outstanding Corporation Common Stock and Outstanding Corporation Voting Corporation Securities, as the case may be.\*\*\*

The 1999 re-approval process

Citing tax considerations, the Board asked the shareholders to re-approve the 1994 Plan in 1999. See 03/29/99 DEF 14A Proxy. The Board stated, in relevant part:

In the event of a "change of control" of the Corporation, automatically in the case of the Covered Officers, (i) all performance criteria of performance-based awards will be deemed fully achieved and all such awards shall be fully earned and vested and (ii) all outstanding awards will be canceled and the holder will be paid in cash therefor on the basis of the "change of control price" as of the date that the change of control occurs or such other date as the Compensation Committee may determine prior to the change of control.

The Board also stated that "a 'change of control' is deemed to have occurred if... (iii) the Corporation's shareholders approve a merger, sale of assets or other similar transaction with respect to which the Corporation's shareholders immediately before the transaction do not own at least 75% of the voting securities of the corporation resulting from the transaction...."

**MILBERG WEISS BERSHAD HYNES & LERACH LLP**

Board of Directors

January 17, 2002

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The Annual Meeting of FPL Group's shareholders was held on May 10, 1999, at which time the shareholders re-approved portions of the 1994 Plan based on the Board's representations.

The failed merger and the improper payments

In July of 2000, FPL Group and Entergy Corporation ("Entergy") announced a *proposed* merger, which was approved by the shareholders of the respective corporations in December 2000. However, on April 1, 2001, the companies terminated the merger agreement. Despite the failed merger, certain executives of FPL Group, FPL, and FPL Energy received millions of dollars in compensation which were reportedly tied to the merger. James L. Broadhead, Chairman and CEO of both FPL Group and FPL, received \$22,686,674, and four other FPL Group and subsidiary executives received \$29,344,498 as described below:

Name	Position	2000	1999	1998
James L. Broadhead	Chairman and CEO of FPL Group and FPL	\$22,686,674	\$1,148,751	\$2,004,180
Paul J. Evanson	President of FPL	\$10,395,654	\$458,985	\$704,304
Lewis Hay, III	President of FPL Energy, LLC -	\$6,696,320	\$65,400	n/a (joined July 1999)
Dennis P. Coyle	General Counsel and Secretary of FPL Group and FPL	\$6,349,587,	\$251,095	\$412,413
Thomas F. Plunkett	President, Nuclear Division of FPL	\$5,902,937	\$179,564	\$103,481
GRAND TOTALS		\$52,031,172	\$2,103,795	\$3,224,378

FPL Group explained these payments in its April 11, 2001 14A Proxy: "FPL Group shareholders' December 15, 2000 approval of a proposed merger with Entergy Corporation resulted in a change of control under the definition in FPL Group's 1994 Long Term Incentive Plan."

MILBERG WEISS BERSHAD HYNES & LERACH LLP

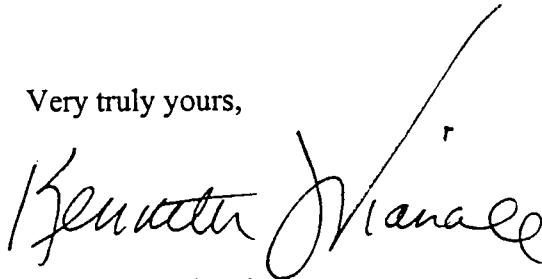
Board of Directors

January 17, 2002

Page - 4 -

However, FPL Group improperly made these payments because a "change in control" never occurred. The 1994 and 1999 Plans require that a corporation result from the merger. Since no such corporation resulted from the proposed merger due to its cancellation, the payments were improper. The actions committed by the officers and directors in making these payments resulted in a direct breach of their fiduciary duties to the Company's shareholders. Mr. Klein demands that the Board of Directors immediately take all steps necessary to secure the recovery of the improper payments described herein.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kenneth J. Vianale", with a long, sweeping flourish extending upwards and to the right.

Kenneth J. Vianale

KJV/jat



## Milberg Weiss Bershad Hynes & Lerach LLP

The Plaza, 5355 Town Center Road, Suite 900, Boca Raton, FL 33486  
(561) 361-5000 Fax: (561) 367-8400

[www.milberg.com](http://www.milberg.com)

New York  
San Diego  
San Francisco  
Los Angeles  
Seattle

FPL GROUP, INC.

COPY OF LETTER DATED JANUARY 17, 2002 RECEIVED BY

Richard J. Kubit

# **EXHIBIT B**

STEEL ■  
HECTOR  
■ DAVIS

Steel Hector & Davis LLP  
200 South Biscayne Boulevard  
Miami, Florida 33131-2398  
305.577.7000  
305.577.7001 Fax  
www.steelhector.com

February 5, 2002

Alvin B. Davis, P.A.  
305.577.2835  
adavis@steelhector.com

**VIA TELECOPIER**

Kenneth J. Vianale, Esq.  
Milberg Weiss Bershad  
Hynes & Lerach LLP  
The Plaza - Suite 900  
5355 Town Center Road  
Boca Raton, Florida 33486

**In re: Demand Letter of William M. Klein**

Dear Mr. Vianale:

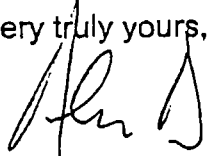
I have been asked to respond to your letter of January 17, 2002 to the Board of Directors of FPL Group, Inc. (the "Board") on behalf of William M. Klein.

In response to an earlier shareholder demand pertaining to the proposed merger between FPL Group and Entergy Corporation, the Board created a Demand Evaluation Committee (the "Committee") made up of three independent, outside Directors. At the next meeting of the Board it will be requested to promptly refer the issues raised in your letter to the Committee for its analysis and recommendation. It is our expectation that the Board will make the reference and that the Committee will undertake its analysis immediately.

The Board will respond substantively to your demand once it has received and considered the Report of the Committee.

You will be kept advised of the Committee's progress.

Very truly yours,



Alvin B. Davis, P.A.

ABD/ps

2-20758

JS 44  
(Rev. 12/96)

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

William M. Klein by Stephen S. Klein  
under power of attorney, on behalf of himself  
and all others similarly situated,

## DEFENDANTS

James L. Broadhead, et al.

NIGHT BOX  
FILED

MAR 08 2002

CIV-MORENO

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Monmouth County, NJ  
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT CLARENCE MADDOX  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

MAGISTRATE JUDGE  
DUBÉ

(c) ATTORNEYS (FIRM NAME, ADDRESS AND TELEPHONE NUMBER)  
KENNETH J. VIANALE/CHRISTOPHER JONES  
MILBERG WEISS BERSHAD HYNES & LERACH LLP  
5355 Town Center Road, Suite 900  
Boca Raton, FL 33486 561-361-5000

ATTORNEYS (IF KNOWN)

Unknown

(d) CIRCLE COUNTY WHERE ACTION AROSE: DADE, MONROE, BROWARD, PALM BEACH, MARTIN, ST. LUCIE, INDIAN RIVER, OKEECHOBEE HIGHLANDS

## II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   | PTF                                   | DEF                                   |   | PTF                        | DEF                        |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1            | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

A CONTRACT	A TORTS	FORFEITURE/PENALTY	A BANKRUPTCY	A OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans Etc. Veterans. <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input checked="" type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury  <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> B 610 Agriculture <input type="checkbox"/> B 620 Other Food & Drug <input type="checkbox"/> B 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> B 630 Liquor Laws <input type="checkbox"/> B 640 R.R. & Truck <input type="checkbox"/> B 650 Airline Regs. <input type="checkbox"/> B 660 Occupational Safety Health <input type="checkbox"/> B 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>A PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 890 Constitutional of State Statutes <input type="checkbox"/> 890 Other Statutory Actions A OR B
<b>A REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>A CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> B 510 Motions to vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> B 530 General <input type="checkbox"/> A 535 Death Penalty <input type="checkbox"/> B 540 Mandamus & Other <input type="checkbox"/> B 550 Civil Rights <input type="checkbox"/> B 555 Prison Condition	<b>A LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor Mgmt. Relations <input type="checkbox"/> 730 Labor Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> A 791 Empl. Ret. Inc. Security Act	<b>B SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA 1395M <input type="checkbox"/> 862 Black Lung 923 <input type="checkbox"/> 863 DIWC DIWW 405(g) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI 405(g)  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> A 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> A 871 IRS - Third Party 26 USC 7609

## VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE  
DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

This action is a verified derivative claim brought to recover unauthorized payments made to certain directors and officers of FPL Group. The Court has jurisdiction pursuant to

LENGTH OF TRIAL  
via days estimated (for both sides to try entire case)

28 U.S.C. § 1332(a)(1)

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION  
☐ UNDER F.R.C.P. 23

DEMAND \$ exceeds  
\$75,001

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NOVIII. RELATED CASE(S) (See instructions):  
IF ANYJUDGE GoldDOCKET NUMBER 02-20170

DATE

SIGNATURE OF ATTORNEY OF RECORD

3-7-02

FOR OFFICE USE ONLY

\$150.00 858872

03/11/02

MAG. JUDGE